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JUN 17 1993

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FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

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June 17, 1993

*Not Admitted to the Bar **ADMITTED IN PENNSYLVANIA ONLY

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VIA HAND DELIVERY

Ms. Donna R. Searcy Secretary Federal Communications Commission Room 222 1919 M Street, N.W. Washington, D.C. 20554

Ex Parte Presentation in MM Docket

Dear Ms. Searcy:

Pursuant to 47 C.F.R. § 1.1206, Miller & Holbrooke submits this original and one copy of a letter disclosing a written and oral ex parte presentation.

On June 16, 1993, Frederick E. Ellrod III met on behalf of Montgomery County, Maryland, with Jacqueline Chorney. meeting dealt with the information required by franchising authorities to approve an application for transfer of a cable system. Attached are two additional copies of written ex parte comments which were given to Ms. Chorney at that meeting and filed with the Secretary on June 16.

Sincerely yours,

MILLER & HOLBROOKE

Frederick E. Ellrod III

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Enclosure(s)

Jacqueline Chorney

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Tillman L. Lay

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June 16, 199

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FREDERICK E. ELLROD III

LARRINE S. HOLBROOKE

JOSEPH VAN EATON

Re: Ex Parte Comments on Behalf of Montgomery County, Maryland, in Anti-Trafficking Proceeding (MM Docket No. 92-264)

Pursuant to 47 C.F.R. § 1.1206, two copies of this document are being filed on the above date with the Commission's Secretary for inclusion in the public record.

On December 10, 1992, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rule Making and Notice of Inquiry in MM Docket No. 92-264, In re Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-trafficking Provisions (Dec. 28, 1992) ("NPRM/NOI"). Paragraphs 7-23 of the NPRM/NOI addressed the new provisions regarding transfers of ownership of cable systems inserted by section 13 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), which added sec. 617 of the Communications Act of 1934 (47 U.S.C. § 537). Numerous comments have been filed in this docket relating to the transfer provisions of the NPRM/NOI.

Montgomery County, Maryland ("the County") supports the Comments of the National Association of Telecommunications Officers and Advisors, et al. (Feb. 9, 1993) ("NATOA Comments") and Reply Comments of the National Association of Telecommunications Officers and Advisors, et al. (Mar. 3, 1993) ("NATOA Reply Comments") with respect to the right of local franchising authorities to require relevant information from cable companies that seek approval for a transfer. A transfer of ownership may substitute a new party in place of the current cable operator, or change the way the operator is managed or Such a change, if not agreed to after due consideration by the franchising authority, disrupts the contractual relationship established by the franchise agreement and vitiates the franchising authority's careful review of the original operator's qualifications. A franchising authority's responsibility to determine whether a proposed transfer of

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ownership is in the public interest requires that it have access to a variety of information about the parties and the transaction itself. Restrictions on that access to limited information, such as those proposed in comments by a variety of cable interests, exceed the Commission's authority under the 1992 Cable Act and endanger local communities' ability to protect their rights.¹

The County is in a unique position to address this issue. In February 1993, Southwestern Bell Corporation ("SBC") proposed to acquire two cable systems in the Washington, D.C. area, including the system serving the County. This transaction represents the first attempt by a regional Bell holding company to acquire a cable system. As such, it presents not only the issues characteristic of any cable system sale, but also a variety of issues relating to the telephone industry and the Modification of Final Judgment governing the Bell companies. These telephone-specific issues could not readily have been predicted at the time the County's cable franchise and governing ordinance were written. It would thus be unreasonable and harmful to the public interest if the Commission sought to adopt rules that would (for example) limit the County to obtaining information only about issues specifically referred to in its ordinance and franchise. The County's experience thus demonstrates in a particularly compelling fashion a franchising authority's need to retain its general authority to request whatever information may be necessary to evaluate a transfer. Because every such transaction is a unique and individual deal, no predefined list of issues or topics can provide for all the matters that a franchising authority may be responsible for investigating.

To illustrate the breadth of the issues that may be involved in diligently reviewing a transfer, the County reproduces here certain information requests it has actually made of the parties in the currently pending transfer process. Each of these requests is intended to produce important information directly related to understanding the effect of the proposed transfer on cable consumers, on potential cable competitors, on the legal authority of Southwestern Bell to provide services promised in the existing franchise, and other possible future risks to the County and its residents if Southwestern Bell is permitted to

¹See NATOA Comments at 14-18; NATOA Reply Comments at 4-7.

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which residences and other buildings in the County lie in the Hagerstown LATA.

Hagerstown LATA.									
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practices, and what will be the effects, if any, on subscribers and on the County?

Very truly yours,

MILLER & HOLBROOKE

Ву

Nicholas P. Miller

Attorneys for Montgomery County, Maryland

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